

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

Plaintiff,

vs.

Case No. 1:21-cr-00255 KWR

GABRIEL LEE GARCIA,

Defendant.

ORDER DENYING DEFENDANT’S EMERGENCY MOTION

THIS MATTER is before the Court on Defendant’s Emergency Motion for Release from Custody, or in the Alternative, for Reconsideration of Appeal for Release based on new medical circumstances (**Doc. 22**), and Defendant’s supplement (**Doc. 23**). Defendant seeks relief pursuant to § 3145(c) for exceptional circumstances.

Defendant was ordered detained by Judge Laura Fashing, and Defendant appealed that decision to the undersigned. In reviewing the detention order, the Court conducted a *de novo* review of the record in this case, pretrial services’ report and recommendation, and the parties’ pleadings. **Doc. 21.**

The Court denied the appeal. **Doc. 21.** In denying the appeal of detention order, the Court analyzed the § 3142(g) factors and concluded as follows: “Weighing the § 3142(g) factors together, the Court concludes that Defendant is a danger to the community by clear and convincing evidence, and that no conditions of release could reasonably assure the safety the of the community. Moreover, the Court finds by a preponderance of the evidence that Defendant is a flight risk and no combination of conditions can reasonably assure his appearance.” **Doc. 21 at 7.**

Four days after the Court denied the appeal, Defendant filed this emergency motion on the basis of changed circumstances. The Government opposes the motion. Defendant asserts he has been hospitalized and was recently released back to Cibola County Correctional Center. He seeks release to his mother as third-party custodian pursuant to § 3145(c) for “exceptional circumstances”, so that he can continue to receive medical treatment.

As part of his motion he provided two emails from the United States Marshals detailing his medical condition and treatment. The record provided indicated that Defendant has been receiving medical care at an Albuquerque hospital, and there is nothing in the *record* to suggest he is not receiving appropriate medical care. Defendant is worried that he will not receive necessary treatment now that he has been sent back to Cibola County Correctional Center. At this time, that fear is speculative. The Court expects that he will receive appropriate care.

Defendant seeks release for exceptional circumstances under § 3145(c). However, the “exceptional circumstances” provision applies to a person who has been found guilty and is pending sentencing or appeal under section §§ 3143(a)(2) or (b)(2), which does not apply here. Moreover, that provision requires that the Court find by clear and convincing evidence that Defendant is not a danger to the community or likely to flee. §§ 3143(a)(1), (b)(1). The Court cannot do so, for the reasons stated in the order denying the appeal of detention order. **Doc. 21.**

Alternatively, even assuming the Court has discretion to release Defendant under § 3145, the changed circumstances do not merit release and the Court would continue to order detention for the reasons stated in the Court’s prior order. **Doc. 21.** The Court incorporates those findings herein. *Id.* Weighing the § 3142(g) factors as set forth in the Court’s order denying the appeal of detention order, the Court would continue to find that Defendant was a danger to the community by clear and convincing evidence and that he is a flight risk by a preponderance of the evidence,

and no conditions or combination of conditions could reasonably assure his appearance or the safety of the community. **Doc. 21.** Defendant proposes release to his mother as a third-party custodian. That condition of release does not satisfy any of the concerns the Court articulated in its order. **Doc. 21.**

IT IS THEREFORE ORDERED that the Defendant's Emergency Motion (**Doc. 22**) is hereby **DENIED**.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE